STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	**02/16/99**	Bill No:	**SB 438**
Tax:	**Property**	Author:	**Rainey**
Board Position:		Related Bills:	**SB 329 (Peace)**

☒ We are following the bill but will not prepare a standard analysis on it in its present form.

This bill, as introduced, would give county assessors assessment jurisdiction over all electrical generation facilities other than those that are rate regulated and operating pursuant to a certificate of public convenience and necessity issued by the California Public Utilities Commission. However, the author's office indicates that this bill will be substantially amended to instead focus primarily on ensuring that co-generation facilities remain locally assessed in the aftermath of the restructure of the electric industry.

This bill is sponsored by the City of Pittsburg. If the co-generation plants located in Pittsburg as well as plants currently proposed to be constructed in Pittsburg, are transferred from local to state assessment, the city stands to lose substantial property tax revenues. Because of the differences in the property tax revenue allocation process for state assessed property and locally assessed property, described below, a transfer would result in a shift in revenue allocations between the various taxing jurisdictions[1] in the county.

Article XIII, Section 19 of the California Constitution, provides that the Board of Equalization is to annually assess companies selling or transmitting electricity. The Board has historically self-restricted its assessment jurisdiction to companies selling or transmitting electricity that were rate regulated and operating pursuant to a certificate of public convenience and necessity by the California Public Utilities Commission or comparable license from a regulatory agency. Property owned by other types of companies selling or transmitting electricity – co-generation facilities, small power generation facilities, and generation facilities using renewable energy resources – have been traditionally assessed by county assessors.

As a result of the restructuring of the electric utility industry in California (AB 1890; Stats. 1996, Ch. 854), rate regulated public utilities are in the process of selling many

[1] "Taxing jurisdictions" are those local entities – counties, cities, schools, and special districts, etc. – that are the recipients of property tax revenues. Prior to Proposition 13, each local entity was authorized to levy a property tax on property located within its boundaries. Each jurisdiction set its own tax rate (within certain statutory restrictions). After Proposition 13, the tax rate on property was limited to 1% and each jurisdiction was allocated a share of the revenue generated from the 1% tax rate.

of their electrical generation facilities. Public utilities are required to sell certain of their generation facilities, they are opting to sell other facilities voluntarily. In addition, the restructuring and subsequent opening of electrical generation to competition has resulted in the planned development and construction of many new electrical generation facilities across the state.

In 1998, fifteen electrical generation facilities previously owned by regulated public utilities and assessed by the Board of Equalization were sold to five non-regulated companies. Consequently, the Board of Equalization was faced with the immediate issue of whether or not it should continue to assess these facilities, and thereby assert assessment jurisdiction over these five companies and their property in California. The Board made an interim decision, for the 1999 tax year only, to continue to assess the fifteen facilities and begin to assess the five companies. With respect to the Board's assessment jurisdiction of companies selling or transmitting electricity in view of electrical restructuring for the long-term, the Board directed its staff to begin a series of meetings with interested parties to develop a regulation defining the Board's jurisdiction. Those discussions are in progress.

Section 1 of Article XIII A of the California Constitution gives the Legislature the authority to determine the allocation of property tax revenues derived from the basic one percent property tax rate. The statutes setting forth the allocation methods for revenues differ depending upon whether they are derived from property assessed by the Board of Equalization (i.e., "state assessed property") or county assessors (i.e., "locally assessed property"). The revenue allocations are performed by each of 58 county auditors and the State Controller audits the county auditors' property tax revenue allocations.

Generally, property tax revenues from locally assessed property are allocated by situs of the property and accrue only to the jurisdictions in the tax rate area where the property is located. A tax rate area is a grouping of properties within a county wherein each parcel is subject to the taxing powers of the same combination of taxing agencies.

Identifying the allocation of property tax revenue from state assessed property is somewhat more complex. Prior to the 1988-89 fiscal year, the property tax revenues from state and locally assessed property were allocated in the same manner – by tax rate area. However, the process of identifying property according to tax rate area had become overwhelming for state assessees. As a result, AB 2890 (Stats. 1986, Chap. 1457) was enacted to simplify the reporting and allocation process for state assessees. It allowed state assessees to report their property holdings by county, rather than by individual tax rate area. It additionally allowed the Board to allocate value by county, rather than by tax rate area.

Essentially, AB 2890 established a prescribed formula, performed by the county auditor, that 1) preserved the tax base for any jurisdiction where state assessed property was sited in the 1987-88 fiscal year and provided an annual increase in this "tax base" of two percent (provided revenues were sufficient) and 2) gave all jurisdictions in the county, including those with pre-1987 tax bases, a share of any post-1987 incremental growth in state assessed values. Any post-1987 incremental growth

is distributed county-wide, which means that regardless of where the growth in value takes place or where new property is constructed, all jurisdictions in the county will share in the revenue. Thus, jurisdictions were held harmless by the allocation system established by AB 2890 and some jurisdictions have since benefited from the post-1987 county-wide share in incremental growth.

The Legislature has approved three exceptions (§100(i)[2], (j)[3], and (k)[4]) to the revenue allocation system for state assessed property established by AB 2890. Those exceptions ensured that, for three specific projects that were to be constructed by public utilities, the revenues from the projects would essentially be allocated as if they were subject to assessment by the county assessor. Thus, the property tax revenue derived from these proposed projects (only two of the three projects were subsequently constructed) would go to the jurisdictions in the tax rate area where the project was to be sited rather than being shared with all jurisdictions located in the county as "incremental growth."

With respect to any change in assessment jurisdiction that results in a switch from local to state assessment, the value of any existing co-generation plant in Pittsburg would revert to "post-1987 incremental growth" (since the plants have always been locally assessed they are not a part of the city's "pre-1987 tax base" for state assessed property) and the property tax revenue from any such plant would be shared county-wide. Likewise, any change in assessment jurisdiction that results in a new co-generation plant being state assessed rather than locally assessed, the property tax revenue from the new property would also be treated as incremental growth to be shared county-wide.

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[2] A computer center in the City of Fairfield (Pacific Bell)
[3] An education and training center in the City of Livermore (PG&E).
[4] For a proposed power plant in the City of Chula Vista (SDG&E), which was subsequently never constructed.